

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 06 October 2003

CASE NO.: 2003-AIR 0024

In the Matter of:

**JOSEPH LEPERA,
Complainant,**

v.

**RUBLOFF AVIATION, LLC,
Respondent.**

DECISION AND ORDER APPROVING SETTLEMENT

A settlement has been reached in the instant case, which was brought under the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR21"), 49 U.S.C. § 42121 (with implementing regulations appearing at 29 C.F.R. Part 1979). Although a hearing was scheduled for September 22 to 26, 2003 in Chicago, Illinois, the parties advised at the telephonic prehearing conference of September 18, 2003 that they had reached an agreement in principle and were in the process of finalizing a settlement agreement. Accordingly, the hearing was canceled informally and was formally canceled in an Order Canceling Hearing of September 23, 2003.

On October 21, 2003, counsel for the Respondent filed a Stipulation to Dismiss signed by both parties and a Full and Complete Release of Claims and Settlement Agreement signed by both parties (hereafter "Settlement Agreement") for my approval, together with a Nick Popovich Release of Claim, signed by nonparty Nick Popovich and Complainant. *See* 29 C.F.R. §1979.111(d)(2) (requiring submission of adjudicatory settlements to administrative law judge for approval).

To the extent that the Settlement Agreement relates to matters under laws other than the AIR, I have limited my review to determining whether the terms thereof are a fair, adequate and reasonable settlement of Complainant's allegation that the Respondent violated the AIR. *See generally Poulos v. Ambassador Fuel Oil Co., Inc.*, 1986-CAA-1 (Sec'y Nov. 2, 1987).

I note that the Settlement Agreement itself incorporates certain confidentiality provisions binding upon the parties. Having reviewed those provisions, I find that the provisions do not run afoul of the requirements of law. *See generally Connecticut Light & Power Co. v. Secretary of the U.S. Department of Labor*, 85 F.3d 89 (2d Cir. 1996); *Bragg v. Houston Lighting & Power Co.*, 1994-ERA 38 (Sec'y June 19, 1995). However, the parties are advised that records in whistleblower cases are agency records which the agency must make available for public

inspection and copying under the Freedom of Information Act (FOIA), 5 U.S.C. §552, and the Department of Labor must respond to any request to inspect and copy the record of this case as provided in the FOIA. As the Administrative Review Board (ARB) has noted: "If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine at the time a request is made whether to exercise its discretion to claim the exemption and withhold the document. If no exemption were applicable, the document would have to be disclosed." *Seater v. Southern California Edison Co.*, 1995-ERA-13 (ARB Mar. 27, 1997). The parties have **not** specifically asserted pre-disclosure notification rights under 29 C.F.R. § 70.26.

Having reviewed the Settlement Agreement, I find that it is a fair, adequate, and reasonable settlement of the complaint in this matter and, as interpreted herein, it is consistent with public policy considerations. In this regard, to the extent that provisions of the agreement make reference to future claims, they are construed as relating solely to the right to sue in the future on claims or causes of action arising out of facts occurring before the date of the agreement. *See generally McCoy v. Utah Power*, 1994-CAA-0001 (Sec'y. Aug. 1, 1994). This Decision and Order Approving Settlement constitutes the final order to the Secretary and is enforceable as such. 29 C.F.R. § 1979.111(e). Accordingly,

ORDER

IT IS HEREBY ORDERED that the Settlement Agreement be, and hereby is **APPROVED**, and the parties shall comply with the terms thereof forthwith; and

IT IS FURTHER ORDERED that the complaint of Complainant Joseph Lepera in the instant case be, and hereby is, **DISMISSED WITH PREJUDICE**.

A

PAMELA LAKES WOOD
Administrative Law Judge

Washington, D.C.